

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
RESIDENT JUDGE

SUSSEX COUNTY COURTHOUSE
1 THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947
TELEPHONE (302) 856-5264

January 16, 2020

James R. Burton
SBI# 00876998
Sussex Correctional Institution
P.O. Box 500
Georgetown, DE 19947

FILED PROTHONOTARY
SUSSEX COUNTY
2020 JAN 16 A 10:56

Re: *State of Delaware v. James Burton*, Def. ID #1802017445

Dear Mr. Burton:

The Court is in receipt of your first Motion for Postconviction Relief filed pursuant to Superior Court Criminal Rule 61 ("Rule 61"). For the reasons expressed below, the Motion is denied.

On September 19, 2018, Defendant entered a plea of guilty to two counts of Unlawful Sexual Contact in the second degree.¹ Defendant was sentenced immediately thereafter. On the first count, Defendant was sentenced to three (3) years at Level 5. Upon completion of the Level 5 Transitions Sex Offender Program, the balance was suspended for one (1) year supervision Level 3. On the second count, Defendant was sentenced to three (3) years at Level 5, balance suspended for three (3) years at supervision Level 3. Defendant has remained incarcerated.

¹ "A person is guilty of unlawful sexual contact in the second degree when the person intentionally has sexual contact with another person who is less than 18 years of age or causes the victim to have sexual contact with the person or a third person." 11 *Del. C.* § 768.

In December, 2018, Defendant filed a Motion for Review of Sentence. Defendant asserted that his family relies on him for financial support, he had full-time employment upon his return to Pennsylvania, and, as a result of violating his probation in Pennsylvania, he would need to participate in a clinical group similar to that of the Transitions Program mandated by his sentence. Defendant's assertions did not convince the Court that the prior sentence should be reconsidered.²

Defendant now asks this Court for postconviction relief pursuant to Superior Court Criminal Rule 61. The grounds raised include: (1) new evidence; (2) employment upon his release; and (3) the distance from his wife and children. Defendant claims that these grounds were not raised because he accepted a plea due to the fear of having to serve more time.³

Defendant again is attempting to renegotiate his sentence, however, this time pursuant to a Rule 61 motion.⁴ "Before addressing the merits of claims made in postconviction proceedings, the Superior Court must first apply the procedural requirements of Rule 61."⁵

A motion for postconviction relief may not be filed more than one year after the judgment of conviction is final.⁶ Defendant was sentenced on September 19, 2018. The judgment of conviction became final on or about October 19, 2018.⁷ The present motion was not filed until December 9, 2019, more than a year after the judgment of conviction became final. Therefore, Defendant's motion is time barred.

² Superior Court Criminal Rule 35(b) provides that the Court will consider an application for modification of a sentence in extraordinary circumstances.

³ Defendant states that he was told if he went to trial he would be facing about 65 years. Def.'s Mot.

⁴ Defendant did not file a contemporaneous request for appointment of counsel. Therefore, Defendant has waived his right to counsel. Super. Ct. Crim. R. 61(e)(1).

⁵ *Taylor v. State*, 12 A.3d 1155, 1155 (Del. 2011) (citing *Younger v. State*, 580 A.2d 552, 554 (Del.1990)).

⁶ Super. Ct. Crim. R. 61.

⁷ Super. Ct. Crim. R. 61(m)(1).

Additionally, Defendant's motion is otherwise procedurally barred as to the grounds raised in Defendant's Rule 35 motion.⁸ Grounds two and three were previously raised in a sentence modification request under Rule 35.⁹ It was denied on March 21, 2019.¹⁰ A repetitive request will not be reconsidered.¹¹ Furthermore, the relief is available only for a ground that the court lacked jurisdiction or a ground that is a sufficient factual or legal basis for a collateral attack on the conviction. These two grounds are neither of those and would be denied because they do not provide any basis for Rule 61 relief.

The procedural bars are inapplicable if Defendant can establish that: (1) the court lacked jurisdiction; (2) new evidence exists that creates a strong inference that Defendant is actually innocent of the underlying charges for which Defendant was convicted; or (3) a new rule of constitutional law made retroactive to Defendant's case would render his convictions invalid.¹²

Defendant does not raise a lack of jurisdiction or a new constitutional law. However, Defendant does assert that there is new evidence. Specifically, Defendant claims he has text messages, GPS phone records, a truck rental agreement, and a work schedule which would show his innocence. The nature of the detailed items are not new; they were available at the time of the plea or could easily have been discovered by due diligence at the time of the plea. Defendant had the ability to introduce this evidence on his behalf. However, by pleading guilty, Defendant waived his right to present this evidence on his own behalf.¹³

⁸ Defendant's Rule 35 motion raised (1) the hardship on his family and (2) his employment. As the Court informed Defendant previously, the sentence imposed was reasonable and appropriate and Defendant did not provide any extraordinary circumstances to warrant modification of his sentence.

⁹ D.I. 28.

¹⁰ D.I. 29.

¹¹ Rule 61(i)(4) provides that "[a]ny ground for relief that was formerly adjudicated, whether in the proceedings leading to the judgment of conviction, in an appeal, in a postconviction proceeding, or in a federal habeas corpus proceeding, is thereafter barred." Super. Ct. Crim. R. 61.

¹² Super. Ct. Crim. R. 61(i)(5). *See also State v. Smith*, 2019 WL 6194130, at *3 (Del. Super. Ct. Nov. 20, 2019).

¹³ *See Windsor v. State*, 202 A.3d 1126 (Del.), cert. denied, 140 S. Ct. 201, 205 L. Ed. 2d 103 (2019), reh'g denied, 2019 WL 6257557 (U.S. Nov. 25, 2019).

Moreover, the Court finds that Defendant's plea was voluntary and knowing. "When addressing the question of whether a plea was constitutionally knowing and voluntary, the Court looks to a plea colloquy to determine if the waiver of constitutional rights was knowing and voluntary."¹⁴ At the plea colloquy, the Court confirmed that the Defendant read, signed and understood the plea agreement. Defendant was informed that he would lose his trial and appeal rights should he plead guilty.¹⁵ The transcript reflects that Defendant understood this and made a voluntary decision to give them up.¹⁶ Furthermore, Defendant confirmed that the confession was not coerced.¹⁷ He claims that he was afraid of never being home again when he was told that he could face sixty-five years if he went to trial. Defendant voluntarily took the plea to avoid the possible sixty-five year sentence.

Defendant admitted his guilt to each of the charged offenses.¹⁸ Defendant is bound by the representations made in the plea agreement and colloquy. The Court is satisfied that Defendant made a knowing, voluntary decision.

Defendant's motion for postconviction relief is procedurally barred and meritless pursuant to Superior Court Criminal Rule 61. Therefore, the motion is DENIED.

IT IS SO ORDERED.

Very truly yours,


Richard R. Stokes

¹⁴ *State v. Brown*, 2019 WL 4899741, at *3 (Del. Super. Ct. Oct. 3, 2019) (citing *Godinez v. Moran*, 509 U.S. 389, 400 (1993)).

¹⁵ *State v. Burton*, Del. Super., ID No. 1802017445 (September 19, 2018), Tr. at 7-8.

¹⁶ *Id.*

¹⁷ Def.'s Mot.

¹⁸ *Burton*, Del. Super., ID No. 1802017445 (September 19, 2018), Tr. at 11.